

MF 07-9

Tax Type: Motor Fuel Use Tax

Issue: Motor Fuel Distributor – 5 Day Revocation

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**Department of Revenue
State of Illinois**

) 00 ST 0000
) 000000000000
) IFTA license

v.

ABC Landscapes, Inc.

)
) Mimi Brin
) Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Gary Stutland, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

Synopsis:

This matter comes on for hearing pursuant to the protest and request for hearing filed by ABC Landscapes, Inc. (“licensee” or “ABC”), regarding the Notice of License Revocation (“Notice”) issued by the Illinois Department of Revenue (“Department”) concerning licensee’s motor fuel use tax license. The basis of the Department’s Notice is that ABC failed to file the \$1,000 bond (“bond”) that the Department demanded. At the hearing, Jane Doe, ABC’s president, appeared and testified. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department, and in support thereof, I make the following Findings of Fact and Conclusions of Law:

Findings of Fact:

1. On March 20, 2007, the Department issued to ABC Landscapes, Inc. a Notice of License Revocation regarding ABC's Motor Fuel Use Tax IFTA license. Department Gr. Ex. No. 1, p. 2 (Notice of License Revocation);
2. On November 30, 2006 ABC applied for its Motor Fuel Use Tax IFTA License and Decals and at that time it was located at Anywhere, IL. Id. at pp. 3-4 (MFUT-12 Application);
3. ABC has been incorporated since February 20, 2004 (id.). Jane Doe has been president of ABC from at least April 9, 2004. Taxpayer Ex. No. 3, p. 1 (Corporation File Detail Report, Secretary of State website at <http://www.ilsos.gov/corporatellc/corporatellccontroller>);
4. Jane Doe was secretary of XYZ Trucking & Feed Supplies, Inc. ("XYZ Trucking") until May 16, 2005. Taxpayer Ex. No. 1 (Resignation as Officer and Director);
5. From 1/2000 through 3/2006, XYZ Trucking filed its quarterly motor fuel tax returns late 15 times incurring \$50.00 penalties and statutory interest for each occurrence. Department Group Ex. No. 1 pp. 10-11;
6. Prior to May 16, 2005, Jane Doe filed, late, motor fuel tax returns on behalf of XYZ Trucking. Tr. pp. 23-24 (Jane Doe); Department Ex. No. 2 (MFUT-15 IFTA Quarterly Return 2004/04 XYZ Trucking & Feed Anywhere IL);

7. On December 28, 2005, the address for XYZ Trucking was Anywhere, Illinois. Id. at pp. 7-8.

Conclusions of Law:

The Motor Fuel Tax Law, 35 ILCS 505/1 *et seq.*, (“MFTL”) requires, in pertinent part, that any motor carrier operating in Illinois must first secure a motor fuel use tax license and decals issued under the International Fuel Tax Agreement (“IFTA”). Id. at 505/13a.4. The MFTL further provides that the Department, “for cause” may require an applicant to post a bond securing the IFTA license (id.) and the Department may revoke an IFTA license in the event that a bond is not provided. Id. at 505/16.

For the quarterly reporting periods of January through March, 2006 and April through June, 2006, ABC filed its quarterly motor fuel tax returns late incurring \$50.00 late filing penalties. Department Group Ex. No. 1, p. 15. XYZ attempted to explain these late filings by testifying that she did not know that she needed to file any returns before she had any trucks on the road (January through March, 2006) (tr. p. 21), and that there was a miscommunication between herself and her office manager regarding the April through June, 2006 filing causing it to be late (tr. p. 21). However, because ABC has paid these penalties, XYZ argues that a bond should not be required.

The Department argues that ABC’s late filings cannot be viewed in a vacuum, in that ABC, through XYZ, is continuing a routine of late filings begun by XYZ Trucking and Jane Doe, who was responsible for that corporation’s late tax filings. As a result of XYZ Trucking’s non-compliance with the requirements of timely filings of motor fuel tax returns, the Department did move, on December 21, 2005, to demand that it file a

bond to secure its IFTA license, and further, issued, on February 8, 2006, a Notice of License Revocation to XYZ Trucking based upon its failure to file that bond.¹

Department Group Ex. No. 1, p. 2

In addition, the Department offers that Jane Doe is still involved with XYZ Trucking, her purported resignation from that corporation notwithstanding. The basis of this suggestion is that Jane Doe signed the certified U.S. Post Office return receipt card for the Department's Notice of License Revocation issued and mailed to XYZ Trucking in February, 2006. XYZ's response to this is that she was visiting her husband at his place of business on the date the Department's revocation notice was delivered, and she just happened "to be the person who signed when the mail came that day." Tr. p. 23.

I find that XYZ's testimony regarding her total separation from XYZ Trucking to not be credible. I note that ABC's own document shows that Jane Doe had an interest in ABC as early as April, 2004. Taxpayer Ex. No. 3, p. 1. At that time, its own documents evidence that she was also the secretary of XYZ Trucking. Department Group Ex. No. 1, pp. 5-6 (XYZ Trucking Application for Motor Fuel Use Tax IFTA License and Decals for the year 2005, identifying Jane Doe as secretary, and signed by Jane Doe, December 9, 2004); Taxpayer Ex. No. 1 (Jane Doe resignation from XYZ Trucking effective May 16, 2005). I also note that on December 28, 2005, XYZ Trucking was located at the same address as ABC, that is, at Anywhere, Illinois. Nor do I find credible, as a result of observing her demeanor as she testified, her testimony that she just happened to be visiting her husband on the day that the Department's revocation notice was delivered to XYZ Trucking. See Mina ex rel. Anghel v. Board of Education for Homewood, 348 Ill. App. 3d 264, 276 (1st Dist. 2004) (credibility of the witness is left for the hearing officer).

¹ The record is unclear as to whether XYZ Trucking complied with the Department's demand for a bond.

Therefore, although Jane Doe claims to have been totally disengaged from XYZ Trucking as of May, 2005, I am unable to make that conclusion.

Certainly, if Jane Doe was still involved with XYZ Trucking, albeit without a formal designation as an officer, the Department's demand for a bond for her solely held business, ABC, would be well within the Department's statutory rights. 35 ILCS 505/13a.4. Even if her separation from XYZ Trucking was effective as of the date of her resignation, I find that the Department's bond demand is still within its statutory rights. XYZ has a history, while with XYZ Trucking, of filing motor fuel use tax returns late. The same is shown to be true for her solely held business, the licensee in this matter. ABC's first two quarterly tax returns for 2006 were filed late. While ABC paid the late penalties associated with those late filings, the statute does not require that the Department's demand for a bond be permissible only in the case wherein tax monies are due and owing. The statute allows the Department to demand a bond, for cause, at its discretion. I cannot conclude that the Department abused its discretion based upon the facts of this case.

WHEREFORE, for the reasons stated above, I recommend that the IFTA license at issue herein be revoked.

8/27/07

Mimi Brin
Administrative Law Judge